

1953

NEW HAMPSHIRE LAW LIBRARY

Aug. 5

SEP 03 1998

Mr. John W. Maynard
Dept. of Real Commissioner for
Building and Loan Associations
State House
Concord, N.H.

CONCORD, N.H.

Dear Mr. Maynard:

You have inquired as to the propriety of certain activities of the Sunford Building & Loan Association. More specifically, you inquire whether a building and loan association, issuing investment shares in per-
ferred to you more than one year of affiliation.

This office is not prepared to rule that the course of action pursued by the directors of said Sunford Building & Loan Association in declaring more than one rate of dividend on investment shares is improper. A reasonably thorough search of the case law dealing with this point disclosed no case older in New Hampshire or other jurisdictions which declared this procedure to be illegal. In fact, no case was found which considered this specific point. The courts have considered a question somewhat similar to the one under consideration, viz; whether or not a building and loan association is permitted to issue preferred stock. The courts are not in harmony on this point, some courts holding that the broad principles of equity concerning the relation of stockholders one to another in sharing the profits and bearing the losses proscribe the issuance of preferred stocks. The other courts hold that a stockholder may not complain that preferred stocks are issued if he was aware that the practice existed when he became a shareholder in the association.

These cases and others in the area of stock and dividends issued and declared by building and loan associations are of very little help in determining the question at hand.

Recourse to the statute dealing with building and loan associations and the statute dealing with the powers of the Bank Commissioner do not clearly show that this practice is improper, though certain sections of chapter 311 might be construed as prohibiting the practice. For example,

C O P Y

Mr. John W. Heyward

-2-

August 5, 1953

section 23 dealing with division of profits states that surplus and profits should be equitably distributed among the shares. If the amounts invested by the two classes of shareholders in question are equal, it might be argued that the only equitable distribution could be equal distribution since all would stand to bear the same loss on dissolution. But this is merely an argument in favor of equal distribution and the practice in question is not clearly prohibited by section 23.

Section 35 deals with investment share certificates. The same sentence reads as follows: "For the purpose of obtaining funds for business the New Hampshire laws such associations may issue investment share certificates bearing dividends at a rate not to exceed five per cent per annum payable semi-annually." In connection with this section it might be argued that the use of the words "a rate" indicates that only one rate is to be paid. But again the requirement of an equal dividend rate is not explicit.

Turning to section 6 of chapter 307 of the Revised Laws dealing with the duties of the bank commissioner, it is noted that the commissioner "shall have general supervision of all banks (except national banks), trust companies, building and loan associations, etc." It is not clear whether this section would authorize the fixing of dividend rates by the Bank Commissioner in the public interest, even though the declaring of disproportionate dividends might not be prohibited by the statute.

It would seem that two courses of action are open to you at the present time. The first course of action would be to permit things to stand as they now do until the Legislature meets in 1955 and suggest that they declare that this practice, which you disfavor, is improper. On the other hand, you could take immediate action and attempt to eliminate the practice as being in violation of the building and loan association statute. Here there is a possibility that your petition might not be sustained. It is a decision which you yourself must make.

After a thorough investigation of the subject this office is not prepared to say that the practice in question is improper as a matter of law.

Very truly yours,

John N. Nassikas
Deputy Attorney General

ETB:RN